

# COURTHOUSE NEWS

A Summary of Topical Highlights from decisions of the  
U.S. District Court for the District of Oregon  
A Court Publication Supported by the Attorney Admissions Fund  
Vol. XV, No. 3, March 11, 2009

## CONVERSION AND BREACH OF BAILMENT

In an action brought by a frustrated shipper against an air carrier that failed to deliver shipped goods, an affiliated corporate entity, and eight individual Doe defendants, Judge Papak recommended that the shipper's motion for summary judgment be denied and that the air carrier's motion for summary judgment be granted. The shipper argued that he had established, as a matter of law, the defendants' liability for conversion and for breach of bailment, without specifying whether he intended his breach of bailment claim to sound in contract or tort. The air carrier argued that all state-law causes of action, other than a claim for "true conversion" had one been pled, were necessarily preempted by the Airline Deregulation Act of 1978, and that its liability on any claim not so preempted was contractually limited to \$100, the amount already tendered to the plaintiff in compensation for his loss.

Because the plaintiff sought a remedy for the loss of goods shipped via an interstate air

carrier, and because the only remedy available for such loss is under the federal common law, Judge Papak recommended that the plaintiff's claims be construed as inherently federal, giving rise to federal question jurisdiction pursuant to the artful pleading doctrine. Based on that recommendation, Judge Papak recommended that the court exercise subject-matter jurisdiction over the plaintiff's claims. Construing the breach of bailment claim as sounding in tort, Judge Papak further recommended that the defendants' request for summary judgment be granted as to the state-law claims expressly articulated in the plaintiff's complaint against the corporate defendants, as preempted by the federal Airline Deregulation Act. Judge Papak further recommended that the complaint be construed as stating a federal common law claim for loss or damage to goods shipped by an interstate air carrier, and that such claim be dismissed as moot, being subject to an enforceable contractual provision limiting the carrier's liability to the amount already tendered.

Finally, Judge Papak recommended that the state-law

claims against the individual Doe defendants be remanded to state court for further proceedings.

Judge Haggerty issued an Order adopting Judge Papak's Findings and Recommendation without modification.

### Otterson v. Federal Express Corporation et al.

Civ. No. 07-1274-PK  
(Opinion, 03/03/09)

Plaintiff's Counsel: Bradley J. Woodworth  
Defense Counsel: Thomas W. Murrey, Jr.

## Insurance Law - Jury Trial

In this insurance coverage case, the insured's house and all of its contents were completely destroyed by a fire. After over seven years of litigation, including two appeals, this case went to trial on the insurer's claim seeking a declaratory judgment that the fire insurance policy was void. Judge King had bifurcated into a second trial the insured's counterclaim for damages resulting from a breach of the insurance contract. The jury returned a Verdict for the insurer, finding that it could void the

## 2 The Courthouse News

policy for a material misrepresentation concerning the personal property. In pretrial motions, Judge King held that the policy was not divisible between real and personal property.

Allstate Insurance Company v. Breeden,  
Civ. No. 01-1686-KI  
(Jury Verdict, Feb. 23, 2009)  
Plaintiff's Counsel: Andrew Lauersdorf, Beth Cupani  
Defense Counsel: William Dickas

### Section 1983 Jury Trial

Plaintiff brought a civil rights violation pursuant to section 1983 against several police officers and the City of Ashland. Plaintiff alleged defendants "willingly participated in the seizure of [plaintiff], knowing full well that they had no authorized warrant and no permission to enter [the home]. Plaintiff further alleged deliberate indifference to his rights, "especially in not waiting for confirmation of a warrant before proceeding, and especially in entering the room with the infant with excessive, unneeded force."

The case was tried to a jury in one-day. The jury returned a verdict for the defense.

Moor v. City of Ashland,  
Civ. No. 06-3090-PA  
(Jury Verdict, Feb. 4, 2009)

Plaintiff's Counsel: William Dames  
Defense Counsel: Gerald Warren

### AGE DISCRIMINATION

In an age discrimination action brought by a former employee against her former employer, Judge Papak recommended denial of the defendant's motion for summary judgment. The defendant argued that the plaintiff could not state a claim under the Age Discrimination in Employment Act of 1967 because it is not a violation of the ADEA to terminate an employee in order to prevent her from receiving seniority-based retirement benefits, and that the plaintiff's claims were precluded by the prior decision of an arbitrator. Judge Papak recommended denial of summary judgment on the first argument both because the plaintiff's complaint did not premise her ADEA claim solely on the theory that she was terminated to prevent her benefits from vesting, but rather alleged that her age was a motivating factor in her termination, and also because her benefits were not based on years of service for the employer but rather on employee age. Judge Papak recommended denial of summary judgment on the second argument because arbitral decisions issued pursuant to a collective bargaining agreement's mandatory arbitration provision are not given preclusive effect in any subsequent federal action absent a clear and unmistakable waiver of judicial

forum rights. Judge Marsh adopted Judge Papak's Findings and Recommendation.

Markell v. Kaiser Foundation  
Civ. No.08-752-PK  
(Opinion, 02/27/09)  
Plaintiff's Counsel: Glenn N. Solomon  
Defense Counsel: Chris Kitchel

### Of Interest:

Magistrate Judge Coffin will speak at the Federal Bar Association's monthly lunch scheduled Thursday, March 19, 2009. Judge Coffin will speak about his ADR/settlement work for the court.

Registration to Ann Fallihee,  
afallihee@barran.com

If interested in receiving a electronic subscription to the U.S. District Court Newsletter, please email Jolie Russo at jolie\_russo@ord.uscourts.gov

The Newsletter is published once a month and distributed free of charge.